

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP  
2 STEVEN D. ROLAND (Bar No. 108097)  
3 AMBER RYE BRUMFIEL (Bar No. 215181)  
4 One Market Plaza  
Steuart Tower, 8th Floor  
San Francisco, California 94105  
Telephone: (415) 781-7900  
Facsimile: (415) 781-2635

BONDURANT, MIXSON & ELMORE, LLP  
RONAN P. DOHERTY (*Pro Hac Vice*)  
CHRISTOPHER T. GIOVINAZZO (*Pro Hac Vice*)  
3900 One Atlantic Center  
1201 West Peachtree Street NW, Suite 3900  
Atlanta, Georgia 30309  
Telephone: (404) 881-4100  
Facsimile: (404) 881-4111

10 | Attorneys for Defendant  
11 HOME DEPOT U.S.A., INC.

16 B&O MANUFACTURING, INC.,  
17 Plaintiff,  
18 v.  
19 HOME DEPOT U.S.A., INC.,  
20 Defendant.

CASE NO. C07 02864 JSW

**(Proposed)**  
**ORDER ON DEFENDANT HOME DEPOT  
U.S.A., INC.'S MOTION TO DISMISS  
COUNTS TWO AND THREE FOR  
FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF MIGHT BE GRANTED**

23 Defendant Home Depot U.S.A., Inc. having timely moved to dismiss Counts Two and  
24 Three of Plaintiff B&O Manufacturing, Inc.'s First Amended Complaint, and this Court finding that  
25 such dismissal is warranted as a matter of law.

IT IS HEREBY ORDERED THAT Defendant Home Depot U.S.A., Inc.'s Motion to

1 Dismiss Counts Two and Three is GRANTED, and Counts Two and Three of the First Amended  
2 Complaint are DISMISSED WITH PREJUDICE. Pursuant to Federal Rule of Civil  
3 Procedure 12(a)(4), Defendant shall answer the remaining allegations in the First Amended  
4 Complaint within ten days of the date of this Order.

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6 Dated: \_\_\_\_\_

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8 The Honorable Jeffrey S. White  
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